

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JASPER L. DOCKERY,

Plaintiff,

-against-

NATHAN TUCKER, et al.,

Defendants.
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REPORT &
RECOMMENDATION

97-CV-3584 (ARR)

ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

This Report and Recommendation addresses plaintiff's request that a discovery sanction in the form of a default judgment be imposed against defendant Tucker for failure to comply with disclosure requirements and failure to cooperate in discovery. See Plaintiff's 2/12/04 Letter ("2/12/04 Letter") at ¶ 4; see also Plaintiff's 1/4/04 Letter at 2. For the following reasons, this Court recommends that plaintiff's request for a discovery sanction be denied.

In support of his request for a sanction, plaintiff asserts that, during the course of discovery, Tucker "made numerous evasive responses and incomplete disclosure, [and] refuse[d] to produce requested documents" 2/12/04 Letter at ¶ 4. However, plaintiff fails to particularize which of Tucker's discovery responses were "evasive," in what ways Tucker has violated disclosure requirements, and which documents have been withheld by Tucker. Nor does plaintiff acknowledge that the adequacy of Tucker's discovery responses was the subject of a conference held on September 9, 1999, at which this Court sustained many of Tucker's objections, see 9/9/99 Calendar Order at 1, and an order issued by this Court on January 27, 2000, see 1/27/00 Memorandum and Order ("1/27/00 Order") at 10-13. Moreover, plaintiff's request for a discovery sanction came nearly four years after discovery

with respect to Tucker closed.¹ Because plaintiff has not substantiated his allegations that Tucker failed to meet his discovery obligations, and due to the untimely nature of the motion, this Court recommends that plaintiff's request for entry of default against Tucker be denied.

Any objections to the recommendation contained herein must be filed with the Honorable Allyne R. Ross on or before March 25, 2005. Failure to file objections in a timely manner may waive a right to appeal the District Court order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72; Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

The Clerk is directed to docket and file this Report and Recommendation via ECF and to mail a copy to plaintiff.

SO ORDERED.

Dated: Brooklyn, New York
March 4, 2005

/s/_____
ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

¹ This Court's January 27, 2000 Order granted plaintiff's request to enlarge discovery until March 6, 2000. See 1/27/00 Order at 13.